

**[Waiver 1996-3]**  
March 12, 1996

James J. Cagley  
[Address withheld]

Re: Request for Advisory Opinion and/or Waiver

Dear Mr. Cagley:

You have asked for advice and, if needed, a waiver regarding the scope of your future employment upon leaving County service and have provided the following information. You recently terminated your employment as an assistant county attorney to return to private practice. During your County tenure, you handled primarily workers' compensation matters and personal injury litigation on behalf of the County. During recent years, you had responsibility for overseeing workers' compensation cases that were handled by outside attorneys pursuant to a contract with the County. You described your direct involvement in those matters as remote and extremely limited. In looking for private employment, you would like to use your expertise.

As you are aware, the Ethics Law prohibits certain activities by former public employees. Specifically, Section 19A-13 of the Ethics Law provides:

- (a) A former public employee must not accept employment or assist any party, other than a County agency, in a case, contract, or other specific matter for 10 years after the last date the employee significantly participated in the matter as a public employee.
- (b) For one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business that contracts with a County agency if the public employee:
  - (1) significantly participated in regulating the person or business; or
  - (2) had official responsibility concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility).

The law further describes "significant participation" as:

[D]irect administrative or operating authority to approve, disapprove, or otherwise decide government action with respect to a specific matter, whether the authority is intermediate or final, exercisable alone or with others, and exercised personally or through subordinates. It ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption.

Section 19A-13(c) of the Montgomery County Ethics Law. In light of these provisions, you have presented three specific questions regarding potential future employment:

1. Whether you may accept employment with or assist any party regarding a workers' compensation claim with which you were directly involved as a County employee, if your future involvement is limited to a different phase in the claim process.
2. Whether you may obtain a waiver of the prohibition against working for a firm or assisting a party regarding a claim on which you were listed as an attorney of record but you did not personally handle the matter.
3. Whether you may work for one of the law firms that provide services to the County based upon a contract to handle workers' compensation claims on behalf of the County.

In relation to each issue, you have requested a waiver of any prohibitions of §19A-13 that would prevent these activities. To receive a waiver of any provisions of §19A-13, the Commission must find one of the following:

- (1) the waiver is needed to ensure that competent services to the County are timely and available;
- (2) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (3) the proposed employment is not likely to create an actual conflict of interest.

Section 19A-8(b) of the Montgomery County Ethics Law. The Commission has reviewed your request in accordance with these requirements.

#### Phase of Workers' Compensation Claim

Your first case involves workers' compensation claims against the County in matters that were handled by the Office of the County Attorney or the contract attorneys during your County employment. You distinguish between the phases of a particular claim. You seek permission to work as a private attorney on a different phase of the same claim that you personally handled during your County employment.

The Commission finds that this activity is prohibited by Section 19A-13(a) of the Ethics Law because your County involvement involved significant participation. The Commission further finds that there is no basis for a waiver of this prohibition. The waiver is not necessary to ensure competent services to the County, nor does the failure to grant the waiver affect the County's ability to hire or retain qualified employees. Moreover, the Commission finds that there is a strong possibility of an actual conflict of interest, because you were privy to information that you might not have had access to otherwise. The Commission must deny your request for a waiver. Therefore, you must not handle any phase of a matter in which you significantly participated during your County employment.

Attorney of Record Only—Representation of Party or Employment with Firm

You have indicated that you were the attorney of record for mailing purposes only in many cases that were handled by private law firms under contract to the County. You maintain that you had no specific knowledge of or involvement in the facts or proceedings of those cases. For this reason, you seek permission to (1) represent parties regarding claims on which you were previously listed as an attorney of record for mailing purposes only; and (2) work for a firm that handles claims on which you were an attorney of record.

Based upon the information provided, the Commission is unable to determine whether your participation as an attorney of record would constitute significant participation under the Ethics Law. Generally, an attorney of record is presumed to have knowledge of the matter, regardless of whether he actually does. Without greater detail, the Commission must deny the request for a waiver to handle particular cases on which you previously were an attorney of record. If additional information becomes available, however, you may submit specific situations to the Commission for a case-by-case review.

The Commission finds that a waiver may be granted to permit you to work for a firm that you previously opposed as the attorney of record. However, the Commission imposes three conditions upon such approval. First, you may not handle any workers' compensation claims involving Montgomery County employees. Second, you must notify the employer of the first condition. Third, the employer must notify the Commission that it has been informed of the condition and will take precautions to prevent your involvement in such cases. With these conditions, the Commission finds that the proposed employment is not likely to create an actual conflict of interest.

Contract Attorneys

Your final question involves whether you may be employed by one of the law firms which handle workers' compensation claims on behalf of the County. The Commission finds that this employment relationship would create no conflict of interest because the firms are representing the County's interests. Therefore, the Commission grants a waiver pursuant to Section 19A-8(b)(3) of the Montgomery County Ethics Law.

If you have any questions regarding this decision, please do not hesitate to contact the Commission.

Sincerely,  
[signed]  
Laurie B. Horvitz, Chair  
Montgomery County Ethics Commission

cc: Barbara McNally, Executive Secretary, Montgomery County Ethics Commission